enjoin the unconscionable use of a legal right. *Clement* v. *Wheeler*, 25 N. H. 361. Thus where the corporate device is employed to do something which the shareholders could not do, courts may disregard the fiction that the corporation is an independent person, and enjoin the continuance of such action. *United States* v. *Milwaukee Refrigerator Transit Co.*, 142 Fed. 247; *Northern Securities Co.* v. *United States*, 193 U. S. 197. In the principal case, upon disregarding the corporate fiction of the coal company it appears that in substance the defendant is transporting its own goods.

CORPORATIONS — TORTS AND CRIMES — LIABILITY FOR SLANDER OF AGENT. — The plaintiff in his declaration alleged, in substance, that an agent of the defendant corporation, in the course of his business, slandered the plaintiff, but he did not allege that the defendant authorized the slander. *Held*, that the declaration discloses no cause of action. *Jackson* v. *Atlantic Coast Line R. Co.*, 69 S. E. 919 (Ga.).

There is a conflict of authority on the question whether any principal is liable for the slander of his agent, not authorized by him. See 23 HARV. L. REV. 304. And where the principal is a corporation, some cases deny its liability on the ground that it has not the capacity to commit this particular tort. See *Behre* v. *National Cash Register Co.*, 100 Ga. 213, 214. But, it is submitted, there is no sound reason why a corporation should not be held; and some authorities take this view. See *Empire Cream Separator Co.* v. *De Laval Dairy Supply Co.*, 75 N. J. L. 207.

ELECTIONS — CONSTITUTIONALITY OF COMMON PROVISIONS IN PRIMARY ELECTION ACTS. — A statute provided that unless the aggregate vote cast for all candidates for nomination on a party ballot for one office should equal twenty per cent of the vote cast by that party for governor at the last general election, such party should not have a party nominee for that office on the official ballot. *Held*, that the act is constitutional. *State ex rel. McGrael v. Phelps*, 128 N. W. 1041 (Wis.).

A statute provided that unless the aggregate vote cast for all candidates for a particular office at the primary should equal thirty per cent of the number of votes cast by that party for secretary of state at the last general election, no nomination should be made by that party for such office. *Held*, that the act is unconstitutional. *State ex rel. Dorval* v. *Hamilton*, 129 N. W. 916 (N. D.). See NOTES, p. 659.

ELECTIONS — ELECTION CONTEST — DISCONTINUANCE OF SUIT. — A statute provided that an election might be contested by any thirty voters who should file a petition in the Supreme Court. A petition signed by thirty-one voters was filed, but, before issue joined, two petitioners moved to discontinue the suit as to them. A motion to amend by adding other petitioners was denied, and the suit dismissed. *Held*, that the court lost jurisdiction of the cause by the withdrawal of the two petitioners, and the suit was properly dismissed. *Bright* v. *Fern*, 20 Haw. 325.

The result reached here is at variance with the few authorities that bear on the question involved. It is generally held that an election contest is not an adversary proceeding, but a matter in the outcome of which the public has an interest. *Minor* v. *Kidder*, 43 Cal. 229; *Coppock* v. *Bower*, 4 M. & W. 361. See MCCRARY, ELECTIONS, § 454. This view is most reasonable, as the statutory remedy has been held to supersede the common-law proceeding of *quo warranto*. *Parks* v. *State*, 100 Ala. 634; *Commonwealth* v. *Leech*, 44 Pa. St. 332. The right of the remaining petitioners to continue the contest is supported by two lines of reasoning. The first class of cases holds that jurisdiction of the cause attaches at the filing of the petition and is not ousted by the subsequent

withdrawal of several petitioners, even though there remain less than the number requisite to start the action. *In re Election of Prothonotary*, 3 Pa. L. J. 160. More sound seems the reasoning of those cases which hold that an election contest is a matter of public interest, not to be frustrated by a few, and hence it is proper for the court to deny those few leave to discontinue, lest by such discontinuance the court lose jurisdiction. *Contested Election of Grim*, 14 Wkly. Notes Cas. (Pa.) 303. *Cf. Mann* v. *Cassidy*, 1 Brewst. (Pa.) 11, 43.

ESTOPPEL — ESTOPPEL IN PAIS — ESTOPPEL OF ONE WHO ACTS IN A REPRESENTATIVE CAPACITY. — The defendant, being insolvent, executed a deed of trust preferring certain creditors. One of these creditors, a corporation, signed the deed through the plaintiff, its vice-president. The plaintiff was himself a creditor of the defendant. *Held* (by an equally divided court), that he is estopped to attack the deed. *Forbes* v. *Bowman*, 70 S. E. 165 (S. C.).

Purporting to act in a representative capacity implies three statements by the actor as an individual the truth of which he cannot deny: (1) the fact of acting as a representative; (2) the right so to act; (3) the absence, so far as he knows, of a property right in another which the transaction supposes to be in the person represented. Beyond that his acts are those of another, he being merely an "assistant." Unless his conduct amounts to a representation as to his own relation to the subject-matter, he cannot be charged, as an individual, with the acts done. *Wright* v. *De Groff*, 14 Mich. 164. If it is such a representation, it creates a personal estoppel. Thus an agent selling property represents that in so far as he knows he has himself no title in it, and so may not assert such a title against the grantee if it existed before the sale. *American Freehold Land Mortgage Co.* v. *Walker*, 119 Ga. 341. But he may, if it was subsequently acquired. *Chapman* v. *Gates*, 54 N. Y. 132. In the principal case, all the representations implied from the plaintiff's signing the deed were true. His "assisting" the corporation to sign the deed was no representation as to his own position regarding the deed. Nor could his silence be regarded as such a representation to the defendant, since the only duty to speak which he might have existed toward his principal and not toward the debtor or the other creditors.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — LIABILITY OF FOREIGN ADMINISTRATOR. — A Tennessee administrator removed funds of the estate to Mississippi, where he resided, and failed to account for them. In Mississippi suit on the Tennessee administration bond was begun against him and his sureties. *Held*, that the suit may be maintained. *Cutrer* v. *State of Tennessee ex rel. Leggett*, 54 So. 434 (Miss.). See NOTES, p. 664.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ENJOINING ENFORCEMENT OF MUNICIPAL ORDINANCE. — The plaintiff sued in a federal court to enjoin the enforcement of a municipal ordinance, alleging an infringement of the Fourteenth Amendment. The state constitution likewise contained a provision against deprivation of life, liberty, or property without due process of law. *Held*, that no federal question is raised until the validity of the ordinance is sustained by the highest court of the state to which the question may be taken. *Seattle Electric Co.* v. *Seattle, Renton & Southern Ry. Co.*, San Francisco Recorder, Feb. 14, 1911 (C. C. A., Ninth Circ.).

Two lines of decisions as to the legal effect of municipal ordinances are to be found, the first holding that where an ordinance is enacted in pursuance of legislative authority, it is state action within the Fourteenth Amendment. *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 142, 148. The other holds that a municipal ordinance not passed under supposed legislative authority cannot be regarded as state action within the constitutional prohibition. *Hamilton*